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IN THE
Supreme Court of the United States
OCTOBER TERM, 1975

No. 75-1425

NORTHERN HELEX COMPANY,
v. *Petitioner,*
UNITED STATES OF AMERICA,
Respondent.

**MOTION BY THE BAR ASSOCIATION OF THE
DISTRICT OF COLUMBIA FOR LEAVE TO FILE
BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE**

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**MOTION BY THE BAR ASSOCIATION OF THE
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BRIEF AMICUS CURIAE**

Amicus, the Bar Association of the District of Columbia, hereby moves for permission to file an *amicus* brief in the captioned case. This motion is being filed under Rule 42(3) since, while *Amicus* has been advised by counsel for petitioner that it has no objections to the Bar Association's appearance in this case, the Solicitor General's office has indicated that he will not give his consent.

This case involves, *inter alia*, the serious question whether the Court of Claims may ignore the mandate of its own Rule 147(a), which requires the court "to find the facts and state separately its conclusion of law" in all actions "tried on the facts." The essential interest of *Amicus* is to communicate to the Court the overwhelming seriousness of plaintiff's petition as it concerns the failure of the court below to follow one of its most important rules. *Amicus* takes no position on the merits of plaintiff's underlying claim for damages or on any other argument in plaintiff's petition for certiorari.

The importance of the Court's failure to make proper findings of fact, in accordance with its Rule 147(a), cannot be overstated and clearly far transcends the narrow interests of the parties in this case. *Amicus*, an organization consisting of approximately 4,200 attorneys, feels uniquely qualified to demonstrate to the Court the extreme importance of this issue to all future litigants at the Court of Claims. While *Amicus* does not question the parties' ability to present their limited concerns adequately to the Court, the broad public interest involved may be overshadowed by the specific interests which bring these parties to the Court. For this reason, the request for permission to file an *amicus* brief on the Rule 147(a) issue should be granted.

Respectfully submitted,

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**BRIEF AMICUS CURIAE BY THE BAR ASSOCIATION
OF THE DISTRICT OF COLUMBIA**

Amicus is an organization consisting of approximately 4,200 members, many of whom practice before the United States Court of Claims. These attorneys represent and serve the interests of clients ranging from individual plaintiffs to the largest corporations in America, all of whom possess the basic desire that their claims against the United States receive the full and adequate consideration by the Court of Claims as mandated by its Rules. The sole interest of *Amicus* in this litigation is to communicate to the Court the overwhelming importance and seriousness of plaintiff's petition as it relates to the failure by the Court of Claims to follow its own Rule 147(a). Accordingly, *Amicus* takes no position on the merits of plaintiff's underlying claim for damages resulting from the Government's breach of its contract to

purchase helium; nor does *Amicus* take a position on any other argument made in the plaintiff's petition for certiorari.

Rule 147(a) of the Rules of the Court of Claims provides, in pertinent part:

"In all actions tried on the facts, the court will find the facts and state separately its conclusion of law, and will enter an appropriate judgment."

Simply stated, the Court of Claims failed to follow its own Rule 147(a) in its recent opinion in this case, dated October 22, 1975. Although determining the 277 Findings of Fact made by the Trial Judge to be "helpful" in its decision,¹ the court arrived at a conclusion clearly inconsistent with the Trial Judge's findings. Notwithstanding its Rule 147(a), the Court itself made no findings of fact nor did it communicate to the parties which findings of the Trial Judge were found to be erroneous.² Under its rules, the Court definitely had the duty and responsibility to substitute for the findings of the Trial Judge those findings it considered to be correct on the evidence in the record of the case.³

¹ *Opinion*, at 2, n. 1.

² It should be noted that Rule 147(b) of the Court of Claims Rules provides that:

"The court may adopt the trial judge's report, including conclusions of fact and law, or may modify it, or reject it in whole or in part, or direct the trial judge to receive further evidence, or refer the case back to him with instructions. Due regard shall be given to the circumstance that the trial judge had the opportunity to evaluate the credibility of the witnesses; and the findings of fact made by the trial judge shall be presumed to be correct."

³ The Court of Claims has previously recognized its responsibility in this regard. See *Miller v. United States*, 168 Ct. Cl. 498, 339 F.2d 661 (1964). In *Miller*, the Court of Claims held that:

"[t]he law casts the ultimate burden of making findings on the judges of the court, and wherever we are convinced that the weight of the testimony is contrary to the finding of the

The importance of the court's failure to make proper findings of fact, in accordance with its Rule 147(a), cannot be overstated. Generally speaking, findings of fact are primarily required as a safeguard against careless factual determinations by the judicial tribunal in question. As the Second Circuit cogently stated in *United States v. Forness*, 125 F.2d 928, 942 (2d Cir. 1942):

"We stress this matter because of the grave importance of fact-finding. The correct finding, as near as may be, of the facts of a law suit is fully as important as the application of the correct legal rules to the facts as found. An impeccably 'right' legal rule applied to the 'wrong' facts yields a decision which is as faulty as one which results from the application of the 'wrong' legal rule to the 'right' facts.

* * * *

"It is sometimes said that the requirement that the trial judge file findings of fact is for the convenience of the upper courts. While it does serve that end, it has a far more important purpose—that of evoking care on the part of the trial judge in ascertaining the facts. For, as every judge knows, to set down in precise words the facts as he finds them is the best way to avoid carelessness in the discharge of that duty: Often a strong impression that, on the basis of the evidence, the facts are thus-and-so gives way when it comes to expressing that impression on paper."

Indeed, the Court of Claims has recognized the necessity for findings of fact by administrative agencies or commissions over which it exercises appellate authority. In *The Snake or Piute Indians v. United States*, 125 Ct. Cl. 241, 249-50, 112 F. Supp. 543, 548-49 (1953), the court stated:

[Trial Judge], it is our duty to substitute for the [Trial Judge's] finding what we consider to be the correct finding."
[Emphasis added.]

168 Ct. Cl. at 501; 339 F.2d at 662.

"The requirement that courts, and commissions acting in a quasi-judicial capacity, shall make findings of fact, is a means provided by Congress for guaranteeing that cases shall be decided according to the evidence and the law, rather than arbitrarily or from extralegal considerations; and findings of fact serve the additional purpose, where provisions for review are made, of apprising the parties and the reviewing tribunal of the factual basis of the action of the court or commission, so that the parties and the reviewing tribunal may determine whether the case has been decided upon the evidence and the law or, on the contrary, upon arbitrary or extralegal considerations. When a decision is accompanied by findings of fact, the reviewing court can decide whether the decision reached by the court or commission follows as a matter of law from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evidence. In the absence of findings of fact the reviewing tribunal can determine neither of these things. The requirement of findings is thus far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered according to facts and law. This is fully as important in respect of commissions as it is in respect to courts." (Quoting *Saginaw Broadcasting Co. v. FCC*, 96 F.2d 554, 559 (D.C. Cir.), *cert. denied*, 305 U.S. 613 (1938)).

As a result of the recognition of their importance, the Court of Claims has forced agencies and commissions under its appellate authority always to render specific findings on material facts at issue. For example, in *Nez Perce Tribe of Indians v. United States*, 194 Ct. Cl. 490 (1971), the Court remanded a case to the Indian Claims Commission for failure to supply such necessary findings. In explaining its decision the Court of Claims stated that:

"[I]t is our function to review the decisions of the Commission (25 U.S.C. § 70s) and we can do this

only by the standards set forth in the statute granting us the power to review. (Indian Claims Commission Act, *supra*.) That statute tells us we should review the findings to determine if the ultimate conclusion is supported by substantial evidence. Thus, when we have only an ultimate conclusion, without the aid of specific findings or reasons which lead up to that conclusion, we are powerless to determine whether that conclusion is supported by substantial evidence." 194 Ct. Cl. at 503.

Proper inclusion of findings of fact is clearly no less essential when the Court of Claims is itself the initial trier of fact. This becomes especially evident when one realizes that review of Court of Claims decisions is limited to a writ of certiorari to this Court. Recognizing this fact, this Court has emphasized on several occasions the importance of the requirement, now a part of Rule 147(a), of properly drafted findings of fact. See *United States v. Penn Foundry & Mfg. Co.*, 337 U.S. 198 (1949); *United States v. Causby*, 328 U.S. 256 (1946). So essential are such findings that this Court has held that:

"When the Court of Claims fails to make findings on a material issue, it is proper to remand the case for such findings." *Seminole Nation v. United States*, 316 U.S. 286, 300 (1942).⁴

If the Court of Claims is allowed to bypass the clear requirements of its Rule 147(a) in the instant proceeding, which is one of the most complex cases ever before it, there is no reason to believe that such avoidance will not occur in the future. Without proper supervision in this regard from this Court, all parties presenting or defending against a claim at the Court of Claims will incur extreme difficulty, as in the present case, in de-

⁴ It should be noted that deficiency in the findings of fact "cannot be rectified by statements in the opinion." *United States v. Causby*, 328 U.S. 256, 267 (1946).

ciphering the facts deemed material by the Court of Claims in a given case. Those with claims of a similar nature will also be at a loss to ascertain the specific basis for the Court of Claims' opinion. It is, therefore, the position of *Amicus* that the failure by the Court of Claims to follow its own rules is a question that requires the immediate attention of this Court.

Wherefore, certiorari should be granted.

Respectfully submitted,

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